IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 169 OF 2004

Zumbar Vinayak Jadhav & ors. Petitioners

Vs.

Shahaji govardhan Jadhav & ors. Respondents

Sanjay D. Thokade for petitiioners.

CORAM: B.H.MARLAPALLE,J.
August 10, 2005.

ORAL ORDER:

1. Heard Mr.Thokade, the learned counsel for the petitioners who are aggrieved by the order dated 30-7-2004 passed by the learned 1st Ad-hoc Additional District Judge at Solapur, allowing the application for condonation of delay in filing an appeal. Regular Civil Suit No.16 of 1985 in which the petitioners were impleaded as defendants was decreed on 25-7-2000. For the first time the petitioners applied for certified copy of the said decree on 12-7-2002, it was made available to them on 17-7-2002 and they filed the appeal on 7-9-2002. In the mean while in the execution proceedings initiated by the decree holders the petitioners had caused their appearance on 16-8-2002. Thus the appeal was beyond

time by about two years and the lower appellate court by the impugned order agreed that good and sufficient reasons were made out to condone the delay.

2. It is evident from the impugned order that in support of the application for condonation of delay affidavit at Exhibit 19 was filed and on the same the applicant was cross-examined. Opponent No.1-B was also examined by the opponents. The applicant was also supported by the affidavit of respondent no.6-Krishna Babu Jadhav (Exh.23). The suit was decreed for recovering possession of the encroached portion of land and mesne profits. In his deposition the applicant had stated that he had given power of attorney to his father who was ill and subsequently died. He was facing on going family problems for more than two years. He had engaged Shri A.N.Deshpande, the learned Advocate to represent his case and the said Advocate also died. The withdrawal of the said Advocate was not known to the applicant and though he had sent a letter to Mr.Deshpande enquiring about the progress of the suit, there was no response. It was on these premises that the lower appellate court was satisfied regarding the good and sufficient reasons to condone the delay but by

levying costs of Rs.1500/- to be paid to the respondents viz. 1-A, 1-C to 1-F, 3 and 4. The view taken by the lower appellate court is a possible view and it cannot be termed as a view which is manifestly erroneous so as to cause interference in a revision application. The lower appellate court observed that the remedy of appeal provided under the statute should not be denied only on the ground of delay so long as some reasons were made out incapacitating the applicant to move the court within time and that there was no element of negligence.

3. The civil revision application, therefore, fails and the same is hereby rejected summarily.

(B.H.MARLAPALLE,J.)